

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 128 of 2000

in

SPECIAL CIVIL APPLICATION No 7373 of 1999

with

LETTERS PATENT APPEAL NO. 129 OF 2000

in

SPECIAL CIVIL APPLICATION NO. 7387 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed :
to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy :
of the judgement?
4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? :

BHIKHABHAI JETHABHAI BHOI

Versus

STATE OF GUJARAT

MR YN OZA for MR BP GUPTA for Appellants

MR HL JANI, AGP for Respondents no.1 to 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision: 01/08/2000

C.A.V.JUDGMENT : (Per : Panchal,J.)

This appeal filed under Clause 15 of the Letters Patent is directed against order dated February 15, 2000, rendered by the learned Single Judge, in Special Civil Application No. 7373/99 and Special Civil Application No. 7387/99, by which interim order dated November 18, 1999 staying reversion order of the appellants and others is vacated.

2. The appellants and others were serving on work-charged establishment in Class-IV service for a long time. They had demanded promotion to Class-III service. Therefore, the Superintending Engineer had made a proposal on August 28, 1997 to the Government for promotion of the appellant and others to Class-III posts. In response to the said proposal, the Superintending Engineer was directed by the Government vide communication dated January 29, 1998 to make appointments to Class-III post in accordance with the recruitment rules and existing Government policy. The Superintending Engineer had made a proposal to extend the tenure of the temporary posts on January 19, 1998. However, before extension of term of temporary posts could be made, the appellants and others were promoted as work-charged Karkuns on completion of 5 years of service in Class-IV service and as work-charged Assistants on completion of 15 years of service in Class-IV service by order dated March 18, 1998.

In response to the proposal of January 19, 1998 for extension of tenure of temporary posts, tenure of 547 temporary posts was extended upto February 28, 1999 by order dated August 24, 1998. Only 22 posts of work-charged Assistants/Karkuns were vacant. Out of the said 22 vacant posts, 15 posts were ordered to be kept in abeyance and 5 posts were abolished. By a communication dated August 24, 1998, Superintending Engineer was permitted to fill in rest of the two posts subject to prior approval of the Finance Department. As only two posts of work-charged Assistants/Karkuns were required to be filled in and that too after approval by the Finance Department, a communication was sent to Superintending Engineer to revert the appellants and others to their substantive posts in Class-IV service. The said

communication was not paid any heed to by the Superintending Engineer. Therefore, the appellants and others were ordered to be reverted to their original posts in class-IV service by order dated September 18, 1999. The appellants and others have challenged the reversion orders in Special Civil Applications No.7373/99, 7387/99, 7438/99 and 7545/99. The learned Single Judge before whom the above-referred to petitions were notified for admission hearing, issued rule and heard the learned counsel for the parties with regard to interim relief. The learned Single Judge by an order dated November 18, 1999 has admitted each petition. So far as grant of interim relief was concerned, the learned Single Judge noted that there was serious dispute regarding implementation of the reversion orders and, therefore, by an order dated November 18, 1999, the learned Single Judge stayed operation of the reversion orders.

3. Feeling aggrieved by the said order, the respondents preferred four Letters Patent Appeals i.e. Letters Patent Appeals No. 1761/99, 1763/99, 1765/99 and 1766/99. The Division Bench hearing the appeals refused to interfere with the order by which implementation of reversion order was stayed, as the matters were at interim stage. However, it was observed by the Division Bench that it was open to the respondents to move the learned Single Judge for modification of the order. The learned Single Judge has vacated the interim relief granted earlier on November 18, 1999 by the impugned judgment, giving rise to these two appeals.

4. The contention that without there being Civil Application for modification of order, the learned Single Judge was not justified in vacating the interim relief granted earlier by the learned Single Judge which was confirmed by the Division Bench in appeals, has no substance. The record of the case indicates that four Civil Applications were filed by the respondents i.e. Civil Application No.649/2000 in Special Civil Application No. 7545/99, Civil Application No.650/2000 in Special Civil Application No.7438/99, Civil Application No. 651/2000 in Special Civil Application No.7387/99 and Civil Application No.652/2000 in Special Civil Application No.7373/99 for vacation and/or modification of the interim relief granted on November 18, 1999. In view of the liberty which was reserved by the Division Bench while disposing of the Letters Patent Appeals, the respondents were justified in filing Civil Applications for vacation and/or modification of the interim order dated November 18, 1999 by which operation

of the reversion order was stayed. Under the circumstances, we are of the opinion that the impugned order of the learned Single Judge cannot be said to be without jurisdiction or lacking any propriety.

5. The plea that without there being additional material on record, interim relief granted earlier should not have been vacated, is devoid of merits. By filing four Civil Applications, the respondents had pointed out to the Court that reversion order was already implemented and, therefore, could not have been stayed by the learned Single Judge. It was also pointed out in Civil Applications that posts on which the appellants and others were serving, were sanctioned only upto February 28, 1999 and grant of mandatory relief was not justified. In our considered opinion, the impugned order does not suffer from the vice of want of material and is not liable to be set aside on that ground.

6. The submission that even on merits, reversion of the appellants and others is not justified, has no substance. The record of the case indicates that the appellants and others were promoted in contravention of Government instructions issued in that behalf and their promotions were irregular. Only two posts of work-charged Assistants/Karkuns could have been filled in and that too after getting approval from the Finance Department, but the appellants and others were promoted to Class-III posts in disregard of Government instructions and existing Government policy. Under the circumstances, as the order of reversion was prima-facie found to be just and proper, the learned Single Judge was justified in vacating the same. It is well settled that mandatory interim relief, which virtually amounts to grant of final relief, should not be granted without adjudicating the claim raised by the parties. The learned Single Judge while vacating the interim relief has struck the balance by directing that the appellants and others shall be entitled to difference of wages from November 18, 1999 to February 15, 2000. In our view, no error is committed by the learned Single Judge in passing the impugned order necessitating our interference in these appeals. The appeals are, therefore, liable to be dismissed.

For the foregoing reasons, the appeals fail and are summarily dismissed, with no order as to costs.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J.)

(patel)